

SHB 2660 - S AMD 824

By Senators Haugen, McCaslin

ADOPTED 03/10/2004

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 10.05.140 and 2003 c 220 s 2 are each amended to read
4 as follows:

5 As a condition of granting a deferred prosecution petition, the
6 court shall order that the petitioner shall not operate a motor vehicle
7 upon the public highways without a valid operator's license and proof
8 of liability insurance. The amount of liability insurance shall be
9 established by the court at not less than that established by RCW
10 46.29.490. As a condition of granting a deferred prosecution petition
11 on any alcohol-dependency based case, the court shall also order the
12 installation of an ignition interlock (~~((or other device))~~) under RCW
13 46.20.720 (~~((for a petitioner who has previously been convicted of a
14 violation of RCW 46.61.502 or 46.61.504 or an equivalent local
15 ordinance or a petitioner who has been charged with such an offense and
16 had an alcohol concentration of at least .15, or by reason of the
17 person's refusal to take a test offered pursuant to RCW 46.20.308 there
18 is no test result indicating the person's alcohol concentration. For
19 any other petitioner, the court may order the installation of an
20 interlock device under RCW 46.20.720(1) as a condition of granting a
21 deferred prosecution petition))~~). The required periods of use of the
22 interlock shall be not less than the periods provided for in RCW
23 46.20.720(2) (a), (b), and (c). As a condition of granting a deferred
24 prosecution petition, the court may order the petitioner to make
25 restitution and to pay costs as defined in RCW 10.01.160. To help
26 ensure continued sobriety and reduce the likelihood of reoffense, the
27 court may order reasonable conditions during the period of the deferred
28 prosecution including, but not limited to, attendance at self-help
29 recovery support groups for alcoholism or drugs, complete abstinence
30 from alcohol and all nonprescribed mind-altering drugs, periodic

1 urinalysis or breath analysis, and maintaining law-abiding behavior.
2 The court may terminate the deferred prosecution program upon violation
3 of the deferred prosecution order.

4 **Sec. 2.** RCW 46.20.308 and 2004 c ... (Substitute House Bill No.
5 3055) s 2 are each amended to read as follows:

6 (1) Any person who operates a motor vehicle within this state is
7 deemed to have given consent, subject to the provisions of RCW
8 46.61.506, to a test or tests of his or her breath or blood for the
9 purpose of determining the alcohol concentration or presence of any
10 drug in his or her breath or blood if arrested for any offense where,
11 at the time of the arrest, the arresting officer has reasonable grounds
12 to believe the person had been driving or was in actual physical
13 control of a motor vehicle while under the influence of intoxicating
14 liquor or any drug or was in violation of RCW 46.61.503. Neither
15 consent nor this section precludes a police officer from obtaining a
16 search warrant for a person's breath or blood.

17 (2) The test or tests of breath shall be administered at the
18 direction of a law enforcement officer having reasonable grounds to
19 believe the person to have been driving or in actual physical control
20 of a motor vehicle within this state while under the influence of
21 intoxicating liquor or any drug or the person to have been driving or
22 in actual physical control of a motor vehicle while having alcohol in
23 a concentration in violation of RCW 46.61.503 in his or her system and
24 being under the age of twenty-one. However, in those instances where
25 the person is incapable due to physical injury, physical incapacity, or
26 other physical limitation, of providing a breath sample or where the
27 person is being treated in a hospital, clinic, doctor's office,
28 emergency medical vehicle, ambulance, or other similar facility or
29 where the officer has reasonable grounds to believe that the person is
30 under the influence of a drug, a blood test shall be administered by a
31 qualified person as provided in RCW 46.61.506(5). The officer shall
32 inform the person of his or her right to refuse the breath or blood
33 test, and of his or her right to have additional tests administered by
34 any qualified person of his or her choosing as provided in RCW
35 46.61.506. The officer shall warn the driver, in substantially the
36 following language, that:

37 (a) If the driver refuses to take the test, the driver's license,

1 permit, or privilege to drive will be revoked or denied for at least
2 one year; and

3 ~~(b) ((If the driver refuses to take the test, the driver will not
4 be eligible for an occupational permit; and~~

5 ~~(e))~~ If the driver refuses to take the test, the driver's refusal
6 to take the test may be used in a criminal trial; and

7 ~~((d))~~ (c) If the driver submits to the test and the test is
8 administered, the driver's license, permit, or privilege to drive will
9 be suspended, revoked, or denied for at least ninety days if the driver
10 is age twenty-one or over and the test indicates the alcohol
11 concentration of the driver's breath or blood is 0.08 or more, or if
12 the driver is under age twenty-one and the test indicates the alcohol
13 concentration of the driver's breath or blood is 0.02 or more, or if
14 the driver is under age twenty-one and the driver is in violation of
15 RCW 46.61.502 or 46.61.504.

16 (3) Except as provided in this section, the test administered shall
17 be of the breath only. If an individual is unconscious or is under
18 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
19 or vehicular assault as provided in RCW 46.61.522, or if an individual
20 is under arrest for the crime of driving while under the influence of
21 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest
22 results from an accident in which there has been serious bodily injury
23 to another person, a breath or blood test may be administered without
24 the consent of the individual so arrested.

25 (4) Any person who is dead, unconscious, or who is otherwise in a
26 condition rendering him or her incapable of refusal, shall be deemed
27 not to have withdrawn the consent provided by subsection (1) of this
28 section and the test or tests may be administered, subject to the
29 provisions of RCW 46.61.506, and the person shall be deemed to have
30 received the warnings required under subsection (2) of this section.

31 (5) If, following his or her arrest and receipt of warnings under
32 subsection (2) of this section, the person arrested refuses upon the
33 request of a law enforcement officer to submit to a test or tests of
34 his or her breath or blood, no test shall be given except as authorized
35 under subsection (3) or (4) of this section.

36 (6) If, after arrest and after the other applicable conditions and
37 requirements of this section have been satisfied, a test or tests of
38 the person's blood or breath is administered and the test results
39 indicate that the alcohol concentration of the person's breath or blood

1 is 0.08 or more if the person is age twenty-one or over, or 0.02 or
2 more if the person is under the age of twenty-one, or the person
3 refuses to submit to a test, the arresting officer or other law
4 enforcement officer at whose direction any test has been given, or the
5 department, where applicable, if the arrest results in a test of the
6 person's blood, shall:

7 (a) Serve notice in writing on the person on behalf of the
8 department of its intention to suspend, revoke, or deny the person's
9 license, permit, or privilege to drive as required by subsection (7) of
10 this section;

11 (b) Serve notice in writing on the person on behalf of the
12 department of his or her right to a hearing, specifying the steps he or
13 she must take to obtain a hearing as provided by subsection (8) of this
14 section;

15 (c) Mark the person's Washington state driver's license or permit
16 to drive, if any, in a manner authorized by the department;

17 (d) Serve notice in writing that the marked license or permit, if
18 any, is a temporary license that is valid for sixty days from the date
19 of arrest or from the date notice has been given in the event notice is
20 given by the department following a blood test, or until the
21 suspension, revocation, or denial of the person's license, permit, or
22 privilege to drive is sustained at a hearing pursuant to subsection (8)
23 of this section, whichever occurs first. No temporary license is valid
24 to any greater degree than the license or permit that it replaces; and

25 (e) Immediately notify the department of the arrest and transmit to
26 the department within seventy-two hours, except as delayed as the
27 result of a blood test, a sworn report or report under a declaration
28 authorized by RCW 9A.72.085 that states:

29 (i) That the officer had reasonable grounds to believe the arrested
30 person had been driving or was in actual physical control of a motor
31 vehicle within this state while under the influence of intoxicating
32 liquor or drugs, or both, or was under the age of twenty-one years and
33 had been driving or was in actual physical control of a motor vehicle
34 while having an alcohol concentration in violation of RCW 46.61.503;

35 (ii) That after receipt of the warnings required by subsection (2)
36 of this section the person refused to submit to a test of his or her
37 blood or breath, or a test was administered and the results indicated
38 that the alcohol concentration of the person's breath or blood was 0.08

1 or more if the person is age twenty-one or over, or was 0.02 or more if
2 the person is under the age of twenty-one; and

3 (iii) Any other information that the director may require by rule.

4 (7) The department of licensing, upon the receipt of a sworn report
5 or report under a declaration authorized by RCW 9A.72.085 under
6 subsection (6)(e) of this section, shall suspend, revoke, or deny the
7 person's license, permit, or privilege to drive or any nonresident
8 operating privilege, as provided in RCW 46.20.3101, such suspension,
9 revocation, or denial to be effective beginning sixty days from the
10 date of arrest or from the date notice has been given in the event
11 notice is given by the department following a blood test, or when
12 sustained at a hearing pursuant to subsection (8) of this section,
13 whichever occurs first.

14 (8) A person receiving notification under subsection (6)(b) of this
15 section may, within thirty days after the notice has been given,
16 request in writing a formal hearing before the department. The person
17 shall pay a fee of one hundred dollars as part of the request. If the
18 request is mailed, it must be postmarked within thirty days after
19 receipt of the notification. Upon timely receipt of such a request for
20 a formal hearing, including receipt of the required one hundred dollar
21 fee, the department shall afford the person an opportunity for a
22 hearing. The department may waive the required one hundred dollar fee
23 if the person is an indigent as defined in RCW 10.101.010. Except as
24 otherwise provided in this section, the hearing is subject to and shall
25 be scheduled and conducted in accordance with RCW 46.20.329 and
26 46.20.332. The hearing shall be conducted in the county of the arrest,
27 except that all or part of the hearing may, at the discretion of the
28 department, be conducted by telephone or other electronic means. The
29 hearing shall be held within sixty days following the arrest or
30 following the date notice has been given in the event notice is given
31 by the department following a blood test, unless otherwise agreed to by
32 the department and the person, in which case the action by the
33 department shall be stayed, and any valid temporary license marked
34 under subsection (6)(c) of this section extended, if the person is
35 otherwise eligible for licensing. For the purposes of this section,
36 the scope of the hearing shall cover the issues of whether a law
37 enforcement officer had reasonable grounds to believe the person had
38 been driving or was in actual physical control of a motor vehicle
39 within this state while under the influence of intoxicating liquor or

1 any drug or had been driving or was in actual physical control of a
2 motor vehicle within this state while having alcohol in his or her
3 system in a concentration of 0.02 or more if the person was under the
4 age of twenty-one, whether the person was placed under arrest, and (a)
5 whether the person refused to submit to the test or tests upon request
6 of the officer after having been informed that such refusal would
7 result in the revocation of the person's license, permit, or privilege
8 to drive, or (b) if a test or tests were administered, whether the
9 applicable requirements of this section were satisfied before the
10 administration of the test or tests, whether the person submitted to
11 the test or tests, or whether a test was administered without express
12 consent as permitted under this section, and whether the test or tests
13 indicated that the alcohol concentration of the person's breath or
14 blood was 0.08 or more if the person was age twenty-one or over at the
15 time of the arrest, or 0.02 or more if the person was under the age of
16 twenty-one at the time of the arrest. The sworn report or report under
17 a declaration authorized by RCW 9A.72.085 submitted by a law
18 enforcement officer is prima facie evidence that the officer had
19 reasonable grounds to believe the person had been driving or was in
20 actual physical control of a motor vehicle within this state while
21 under the influence of intoxicating liquor or drugs, or both, or the
22 person had been driving or was in actual physical control of a motor
23 vehicle within this state while having alcohol in his or her system in
24 a concentration of 0.02 or more and was under the age of twenty-one and
25 that the officer complied with the requirements of this section.

26 A hearing officer shall conduct the hearing, may issue subpoenas
27 for the attendance of witnesses and the production of documents, and
28 shall administer oaths to witnesses. The hearing officer shall not
29 issue a subpoena for the attendance of a witness at the request of the
30 person unless the request is accompanied by the fee required by RCW
31 5.56.010 for a witness in district court. The sworn report or report
32 under a declaration authorized by RCW 9A.72.085 of the law enforcement
33 officer and any other evidence accompanying the report shall be
34 admissible without further evidentiary foundation and the
35 certifications authorized by the criminal rules for courts of limited
36 jurisdiction shall be admissible without further evidentiary
37 foundation. The person may be represented by counsel, may question
38 witnesses, may present evidence, and may testify. The department shall

1 order that the suspension, revocation, or denial either be rescinded or
2 sustained.

3 (9) If the suspension, revocation, or denial is sustained after
4 such a hearing, the person whose license, privilege, or permit is
5 suspended, revoked, or denied has the right to file a petition in the
6 superior court of the county of arrest to review the final order of
7 revocation by the department in the same manner as an appeal from a
8 decision of a court of limited jurisdiction. Notice of appeal must be
9 filed within thirty days after the date the final order is served or
10 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ
11 1.1, or other statutes or rules referencing de novo review, the appeal
12 shall be limited to a review of the record of the administrative
13 hearing. The appellant must pay the costs associated with obtaining
14 the record of the hearing before the hearing officer. The filing of
15 the appeal does not stay the effective date of the suspension,
16 revocation, or denial. A petition filed under this subsection must
17 include the petitioner's grounds for requesting review. Upon granting
18 petitioner's request for review, the court shall review the
19 department's final order of suspension, revocation, or denial as
20 expeditiously as possible. The review must be limited to a
21 determination of whether the department has committed any errors of
22 law. The superior court shall accept those factual determinations
23 supported by substantial evidence in the record: (a) That were
24 expressly made by the department; or (b) that may reasonably be
25 inferred from the final order of the department. The superior court
26 may reverse, affirm, or modify the decision of the department or remand
27 the case back to the department for further proceedings. The decision
28 of the superior court must be in writing and filed in the clerk's
29 office with the other papers in the case. The court shall state the
30 reasons for the decision. If judicial relief is sought for a stay or
31 other temporary remedy from the department's action, the court shall
32 not grant such relief unless the court finds that the appellant is
33 likely to prevail in the appeal and that without a stay the appellant
34 will suffer irreparable injury. If the court stays the suspension,
35 revocation, or denial it may impose conditions on such stay.

36 (10) If a person whose driver's license, permit, or privilege to
37 drive has been or will be suspended, revoked, or denied under
38 subsection (7) of this section, other than as a result of a breath or
39 blood test refusal, and who has not committed an offense for which he

1 or she was granted a deferred prosecution under chapter 10.05 RCW,
2 petitions a court for a deferred prosecution on criminal charges
3 arising out of the arrest for which action has been or will be taken
4 under subsection (7) of this section, the court may direct the
5 department to stay any actual or proposed suspension, revocation, or
6 denial for at least forty-five days but not more than ninety days. If
7 the court stays the suspension, revocation, or denial, it may impose
8 conditions on such stay. If the person is otherwise eligible for
9 licensing, the department shall issue a temporary license, or extend
10 any valid temporary license marked under subsection (6) of this
11 section, for the period of the stay. If a deferred prosecution
12 treatment plan is not recommended in the report made under RCW
13 10.05.050, or if treatment is rejected by the court, or if the person
14 declines to accept an offered treatment plan, or if the person violates
15 any condition imposed by the court, then the court shall immediately
16 direct the department to cancel the stay and any temporary marked
17 license or extension of a temporary license issued under this
18 subsection.

19 A suspension, revocation, or denial imposed under this section,
20 other than as a result of a breath or blood test refusal, shall be
21 stayed if the person is accepted for deferred prosecution as provided
22 in chapter 10.05 RCW for the incident upon which the suspension,
23 revocation, or denial is based. If the deferred prosecution is
24 terminated, the stay shall be lifted and the suspension, revocation, or
25 denial reinstated. If the deferred prosecution is completed, the stay
26 shall be lifted and the suspension, revocation, or denial canceled.

27 (11) When it has been finally determined under the procedures of
28 this section that a nonresident's privilege to operate a motor vehicle
29 in this state has been suspended, revoked, or denied, the department
30 shall give information in writing of the action taken to the motor
31 vehicle administrator of the state of the person's residence and of any
32 state in which he or she has a license.

33 **Sec. 3.** RCW 46.20.311 and 2003 c 366 s 2 are each amended to read
34 as follows:

35 (1)(a) The department shall not suspend a driver's license or
36 privilege to drive a motor vehicle on the public highways for a fixed
37 period of more than one year, except as specifically permitted under
38 RCW 46.20.267, 46.20.342, or other provision of law.

1 **(b)** Except for a suspension under RCW 46.20.267, 46.20.289,
2 46.20.291(5), 46.61.740, or 74.20A.320, whenever the license or driving
3 privilege of any person is suspended by reason of a conviction, a
4 finding that a traffic infraction has been committed, pursuant to
5 chapter 46.29 RCW, or pursuant to RCW 46.20.291 or 46.20.308, the
6 suspension shall remain in effect until the person gives and thereafter
7 maintains proof of financial responsibility for the future as provided
8 in chapter 46.29 RCW.

9 **(c)** If the suspension is the result of a violation of RCW 46.61.502
10 or 46.61.504, the department shall determine the person's eligibility
11 for licensing based upon the reports provided by the alcoholism agency
12 or probation department designated under RCW 46.61.5056 and shall deny
13 reinstatement until enrollment and participation in an approved program
14 has been established and the person is otherwise qualified. If the
15 suspension is the result of a violation of RCW 46.61.502 or 46.61.504,
16 and the person is required pursuant to RCW 46.20.720 to drive only a
17 motor vehicle equipped with a functioning ignition interlock (~~(or other~~
18 ~~biological or technical device)~~), the department shall determine the
19 person's eligibility for licensing based upon written verification by
20 a company doing business in the state that it has installed the
21 required device on a vehicle owned (~~(and/or)~~) or operated by the person
22 seeking reinstatement. If, based upon notification from the interlock
23 provider or otherwise, the department determines that an interlock
24 required under RCW 46.20.720 is no longer installed or functioning as
25 required, the department shall suspend the person's license or
26 privilege to drive. Whenever the license or driving privilege of any
27 person is suspended or revoked as a result of noncompliance with an
28 ignition interlock requirement, the suspension shall remain in effect
29 until the person provides notice issued by a company doing business in
30 the state that a vehicle owned or operated by the person is equipped
31 with a functioning ignition interlock device.

32 **(d)** Whenever the license or driving privilege of any person is
33 suspended as a result of certification of noncompliance with a child
34 support order under chapter 74.20A RCW or a residential or visitation
35 order, the suspension shall remain in effect until the person provides
36 a release issued by the department of social and health services
37 stating that the person is in compliance with the order.

38 ~~((b))~~ **(e)**(i) The department shall not issue to the person a new,

1 duplicate, or renewal license until the person pays a reissue fee of
2 twenty dollars.

3 (ii) If the suspension is the result of a violation of RCW
4 46.61.502 or 46.61.504, or is the result of administrative action under
5 RCW 46.20.308, the reissue fee shall be one hundred fifty dollars.

6 (2)(a) Any person whose license or privilege to drive a motor
7 vehicle on the public highways has been revoked, unless the revocation
8 was for a cause which has been removed, is not entitled to have the
9 license or privilege renewed or restored until: (i) After the
10 expiration of one year from the date the license or privilege to drive
11 was revoked; (ii) after the expiration of the applicable revocation
12 period provided by RCW 46.20.3101 or 46.61.5055; (iii) after the
13 expiration of two years for persons convicted of vehicular homicide; or
14 (iv) after the expiration of the applicable revocation period provided
15 by RCW 46.20.265.

16 (b)(i) After the expiration of the appropriate period, the person
17 may make application for a new license as provided by law together with
18 a reissue fee in the amount of twenty dollars.

19 (ii) If the revocation is the result of a violation of RCW
20 46.20.308, 46.61.502, or 46.61.504, the reissue fee shall be one
21 hundred fifty dollars. If the revocation is the result of a violation
22 of RCW 46.61.502 or 46.61.504, the department shall determine the
23 person's eligibility for licensing based upon the reports provided by
24 the alcoholism agency or probation department designated under RCW
25 46.61.5056 and shall deny reissuance of a license, permit, or privilege
26 to drive until enrollment and participation in an approved program has
27 been established and the person is otherwise qualified. If the
28 revocation is the result of a violation of RCW 46.61.502 or 46.61.504,
29 and the person is required pursuant to RCW 46.20.720 to drive only a
30 motor vehicle equipped with a functioning ignition interlock or other
31 biological or technical device, the department shall determine the
32 person's eligibility for licensing based upon written verification by
33 a company doing business in the state that it has installed the
34 required device on a vehicle owned (~~and/or~~) or operated by the person
35 applying for a new license. If, following issuance of a new license,
36 the department determines, based upon notification from the interlock
37 provider or otherwise, that an interlock required under RCW 46.20.720
38 is no longer functioning, the department shall suspend the person's

1 license or privilege to drive until the department has received written
2 verification from an interlock provider that a functioning interlock is
3 installed.

4 (c) Except for a revocation under RCW 46.20.265, the department
5 shall not then issue a new license unless it is satisfied after
6 investigation of the driving ability of the person that it will be safe
7 to grant the privilege of driving a motor vehicle on the public
8 highways, and until the person gives and thereafter maintains proof of
9 financial responsibility for the future as provided in chapter 46.29
10 RCW. For a revocation under RCW 46.20.265, the department shall not
11 issue a new license unless it is satisfied after investigation of the
12 driving ability of the person that it will be safe to grant that person
13 the privilege of driving a motor vehicle on the public highways.

14 (3)(a) Whenever the driver's license of any person is suspended
15 pursuant to Article IV of the nonresident violators compact or RCW
16 46.23.020 or 46.20.289 or 46.20.291(5), the department shall not issue
17 to the person any new or renewal license until the person pays a
18 reissue fee of twenty dollars.

19 (b) If the suspension is the result of a violation of the laws of
20 this or any other state, province, or other jurisdiction involving (i)
21 the operation or physical control of a motor vehicle upon the public
22 highways while under the influence of intoxicating liquor or drugs, or
23 (ii) the refusal to submit to a chemical test of the driver's blood
24 alcohol content, the reissue fee shall be one hundred fifty dollars.

25 **Sec. 4.** RCW 46.20.3101 and 1998 c 213 s 2, 1998 c 209 s 2, and
26 1998 c 207 s 8 are each reenacted and amended to read as follows:

27 Pursuant to RCW 46.20.308, the department shall suspend, revoke, or
28 deny the arrested person's license, permit, or privilege to drive as
29 follows:

30 (1) In the case of a person who has refused a test or tests:

31 (a) For a first refusal within seven years, where there has not
32 been a previous incident within seven years that resulted in
33 administrative action under this section, revocation or denial for one
34 year;

35 (b) For a second or subsequent refusal within seven years, or for
36 a first refusal where there has been one or more previous incidents
37 within seven years that have resulted in administrative action under
38 this section, revocation or denial for two years or until the person

1 reaches age twenty-one, whichever is longer. (~~(A revocation imposed~~
2 ~~under this subsection (1)(b) shall run consecutively to the period of~~
3 ~~any suspension, revocation, or denial imposed pursuant to a criminal~~
4 ~~conviction arising out of the same incident.))~~

5 (2) In the case of an incident where a person has submitted to or
6 been administered a test or tests indicating that the alcohol
7 concentration of the person's breath or blood was 0.08 or more:

8 (a) For a first incident within seven years, where there has not
9 been a previous incident within seven years that resulted in
10 administrative action under this section, suspension for ninety days;

11 (b) For a second or subsequent incident within seven years,
12 revocation or denial for two years.

13 (3) In the case of an incident where a person under age twenty-one
14 has submitted to or been administered a test or tests indicating that
15 the alcohol concentration of the person's breath or blood was in
16 violation of RCW 46.61.502, 46.61.503, or 46.61.504:

17 (a) For a first incident within seven years, suspension or denial
18 for ninety days;

19 (b) For a second or subsequent incident within seven years,
20 revocation or denial for one year or until the person reaches age
21 twenty-one, whichever is longer.

22 (4) The department shall grant credit on a day-for-day basis for
23 any portion of a suspension, revocation, or denial already served under
24 this section for a suspension, revocation, or denial imposed under RCW
25 46.61.5055 arising out of the same incident.

26 **Sec. 5.** RCW 46.20.342 and 2001 c 325 s 3 are each amended to read
27 as follows:

28 (1) It is unlawful for any person to drive a motor vehicle in this
29 state while that person is in a suspended or revoked status or when his
30 or her privilege to drive is suspended or revoked in this or any other
31 state. Any person who has a valid Washington driver's license is not
32 guilty of a violation of this section.

33 (a) A person found to be an habitual offender under chapter 46.65
34 RCW, who violates this section while an order of revocation issued
35 under chapter 46.65 RCW prohibiting such operation is in effect, is
36 guilty of driving while license suspended or revoked in the first
37 degree, a gross misdemeanor. Upon the first such conviction, the
38 person shall be punished by imprisonment for not less than ten days.

1 Upon the second conviction, the person shall be punished by
2 imprisonment for not less than ninety days. Upon the third or
3 subsequent conviction, the person shall be punished by imprisonment for
4 not less than one hundred eighty days. If the person is also convicted
5 of the offense defined in RCW 46.61.502 or 46.61.504, when both
6 convictions arise from the same event, the minimum sentence of
7 confinement shall be not less than ninety days. The minimum sentence
8 of confinement required shall not be suspended or deferred. A
9 conviction under this subsection does not prevent a person from
10 petitioning for reinstatement as provided by RCW 46.65.080.

11 (b) A person who violates this section while an order of suspension
12 or revocation prohibiting such operation is in effect and while the
13 person is not eligible to reinstate his or her driver's license or
14 driving privilege, other than for a suspension for the reasons
15 described in (c) of this subsection, is guilty of driving while license
16 suspended or revoked in the second degree, a gross misdemeanor. This
17 subsection applies when a person's driver's license or driving
18 privilege has been suspended or revoked by reason of:

19 (i) A conviction of a felony in the commission of which a motor
20 vehicle was used;

21 (ii) A previous conviction under this section;

22 (iii) A notice received by the department from a court or diversion
23 unit as provided by RCW 46.20.265, relating to a minor who has
24 committed, or who has entered a diversion unit concerning an offense
25 relating to alcohol, legend drugs, controlled substances, or imitation
26 controlled substances;

27 (iv) A conviction of RCW 46.20.410, relating to the violation of
28 restrictions of an occupational or a temporary restricted driver's
29 license;

30 (v) A conviction of RCW 46.20.345, relating to the operation of a
31 motor vehicle with a suspended or revoked license;

32 (vi) A conviction of RCW 46.52.020, relating to duty in case of
33 injury to or death of a person or damage to an attended vehicle;

34 (vii) A conviction of RCW 46.61.024, relating to attempting to
35 elude pursuing police vehicles;

36 (viii) A conviction of RCW 46.61.500, relating to reckless driving;

37 (ix) A conviction of RCW 46.61.502 or 46.61.504, relating to a
38 person under the influence of intoxicating liquor or drugs;

39 (x) A conviction of RCW 46.61.520, relating to vehicular homicide;

1 (xi) A conviction of RCW 46.61.522, relating to vehicular assault;
2 (xii) A conviction of RCW 46.61.527(4), relating to reckless
3 endangerment of roadway workers;
4 (xiii) A conviction of RCW 46.61.530, relating to racing of
5 vehicles on highways;
6 (xiv) A conviction of RCW 46.61.685, relating to leaving children
7 in an unattended vehicle with motor running;
8 (xv) A conviction of RCW 46.61.740, relating to theft of motor
9 vehicle fuel;
10 (xvi) A conviction of RCW 46.64.048, relating to attempting,
11 aiding, abetting, coercing, and committing crimes;
12 (xvii) An administrative action taken by the department under
13 chapter 46.20 RCW; or
14 (xviii) A conviction of a local law, ordinance, regulation, or
15 resolution of a political subdivision of this state, the federal
16 government, or any other state, of an offense substantially similar to
17 a violation included in this subsection.
18 (c) A person who violates this section when his or her driver's
19 license or driving privilege is, at the time of the violation,
20 suspended or revoked solely because (i) the person must furnish proof
21 of satisfactory progress in a required alcoholism or drug treatment
22 program, (ii) the person must furnish proof of financial responsibility
23 for the future as provided by chapter 46.29 RCW, (iii) the person has
24 failed to comply with the provisions of chapter 46.29 RCW relating to
25 uninsured accidents, (iv) the person has failed to respond to a notice
26 of traffic infraction, failed to appear at a requested hearing,
27 violated a written promise to appear in court, or has failed to comply
28 with the terms of a notice of traffic infraction or citation, as
29 provided in RCW 46.20.289, (v) the person has committed an offense in
30 another state that, if committed in this state, would not be grounds
31 for the suspension or revocation of the person's driver's license, (vi)
32 the person has been suspended or revoked by reason of one or more of
33 the items listed in (b) of this subsection, but was eligible to
34 reinstate his or her driver's license or driving privilege at the time
35 of the violation, or (vii) the person has received traffic citations or
36 notices of traffic infraction that have resulted in a suspension under
37 RCW 46.20.267 relating to intermediate drivers' licenses, or any
38 combination of (i) through (vii), is guilty of driving while license
39 suspended or revoked in the third degree, a misdemeanor.

1 (2) Upon receiving a record of conviction of any person or upon
2 receiving an order by any juvenile court or any duly authorized court
3 officer of the conviction of any juvenile under this section, the
4 department shall:

5 (a) For a conviction of driving while suspended or revoked in the
6 first degree, as provided by subsection (1)(a) of this section, extend
7 the period of administrative revocation imposed under chapter 46.65 RCW
8 for an additional period of one year from and after the date the person
9 would otherwise have been entitled to apply for a new license or have
10 his or her driving privilege restored; or

11 (b) For a conviction of driving while suspended or revoked in the
12 second degree, as provided by subsection (1)(b) of this section, not
13 issue a new license or restore the driving privilege for an additional
14 period of one year from and after the date the person would otherwise
15 have been entitled to apply for a new license or have his or her
16 driving privilege restored; or

17 (c) Not extend the period of suspension or revocation if the
18 conviction was under subsection (1)(c) of this section. If the
19 conviction was under subsection (1)(a) or (b) of this section and the
20 court recommends against the extension and the convicted person has
21 obtained a valid driver's license, the period of suspension or
22 revocation shall not be extended.

23 **Sec. 6.** RCW 46.20.380 and 1985 ex.s. c 1 s 6 are each amended to
24 read as follows:

25 No person may file an application for an occupational or a
26 temporary restricted driver's license as provided in RCW 46.20.391
27 unless he or she first pays to the director or other person authorized
28 to accept applications and fees for driver's licenses a fee of
29 (~~twenty-five~~) one hundred dollars. The applicant shall receive upon
30 payment an official receipt for the payment of such fee. All such fees
31 shall be forwarded to the director who shall transmit such fees to the
32 state treasurer in the same manner as other driver's license fees.

33 **Sec. 7.** RCW 46.20.391 and 1999 c 274 s 4 and 1999 c 272 s 1 are
34 each reenacted and amended to read as follows:

35 (1)(a) Any person licensed under this chapter who is convicted of
36 an offense relating to motor vehicles for which suspension or
37 revocation of the driver's license is mandatory, other than vehicular

1 homicide or vehicular assault, or who has had his or her license
2 suspended, revoked, or denied under RCW 46.20.3101 (~~((2)(a) or~~
3 ~~(3)(a))~~), may submit to the department an application for (~~(an~~
4 ~~occupational)~~) a temporary restricted driver's license. The
5 department, upon receipt of the prescribed fee and upon determining
6 that the petitioner is (~~engaged in an occupation or trade that makes~~
7 ~~it essential that the petitioner operate a motor vehicle~~) eligible to
8 receive the license, may issue (~~(an occupational)~~) a temporary
9 restricted driver's license and may set definite restrictions as
10 provided in RCW 46.20.394. No person may petition for, and the
11 department shall not issue, (~~(an occupational)~~) a temporary restricted
12 driver's license that is effective during the first thirty days of any
13 suspension or revocation imposed (~~(either)~~) for a violation of RCW
14 46.61.502 or 46.61.504 or (~~(under RCW 46.20.3101 (2)(a) or (3)(a), or~~
15 ~~for both a violation of RCW 46.61.502 or 46.61.504 and under RCW~~
16 ~~46.20.3101 (2)(a) or (3)(a) where the action arises from the same~~
17 ~~incident. A person aggrieved by the decision of the department on the~~
18 ~~application for an occupational driver's license may request a hearing~~
19 ~~as provided by rule of the department)~~), for a suspension, revocation,
20 or denial imposed under RCW 46.20.3101, during the required minimum
21 portion of the periods of suspension, revocation, or denial established
22 under (c) of this subsection.

23 (b) An applicant under this subsection whose driver's license is
24 suspended or revoked for an alcohol-related offense shall provide proof
25 to the satisfaction of the department that a functioning ignition
26 interlock device has been installed on a vehicle owned or operated by
27 the person.

28 (i) The department shall require the person to maintain such a
29 device on a vehicle owned or operated by the person and shall restrict
30 the person to operating only vehicles equipped with such a device, for
31 the remainder of the period of suspension, revocation, or denial.

32 (ii) Subject to any periodic renewal requirements established by
33 the department pursuant to this section and subject to any applicable
34 compliance requirements under this chapter or other law, a temporary
35 restricted driver's license granted after a suspension or revocation
36 under RCW 46.61.5055 or 46.20.3101 extends through the remaining
37 portion of any concurrent or consecutive suspension or revocation that
38 may be imposed as the result of administrative action and criminal
39 conviction arising out of the same incident.

1 (iii) The time period during which the person is licensed under
2 this section shall apply on a day-for-day basis toward satisfying the
3 period of time the ignition interlock device restriction is required
4 under RCW 46.20.720 (1) and (2) (a), (b), and (c).

5 (c) The department shall provide by rule the minimum portions of
6 the periods of suspension, revocation, or denial set forth in RCW
7 46.20.3101 after which a person may apply for a temporary restricted
8 driver's license under this section. In establishing the minimum
9 portions of the periods of suspension, revocation, or denial, the
10 department shall consider the requirements of federal law regarding
11 state eligibility for grants or other funding, and shall establish such
12 periods so as to ensure that the state will maintain its eligibility,
13 or establish eligibility, to obtain incentive grants or any other
14 federal funding.

15 (2)(a) A person licensed under this chapter whose driver's license
16 is suspended administratively due to failure to appear or pay a traffic
17 ticket under RCW 46.20.289; a violation of the financial responsibility
18 laws under chapter 46.29 RCW; or for multiple violations within a
19 specified period of time under RCW 46.20.291, may apply to the
20 department for an occupational driver's license (~~(if the applicant~~
21 ~~demonstrates to the satisfaction of the department that one of the~~
22 ~~following additional conditions are met:~~

23 ~~(i) The applicant is in an apprenticeship program or an on-the-job~~
24 ~~training program for which a driver's license is required;~~

25 ~~(ii) The applicant presents evidence that he or she has applied for~~
26 ~~a position in an apprenticeship or on the job training program and the~~
27 ~~program has certified that a driver's license is required to begin the~~
28 ~~program, provided that a license granted under this provision shall be~~
29 ~~in effect no longer than fourteen days;~~

30 ~~(iii) The applicant is in a program that assists persons who are~~
31 ~~enrolled in a WorkFirst program pursuant to chapter 74.08A RCW to~~
32 ~~become gainfully employed and the program requires a driver's license;~~
33 ~~or~~

34 ~~(iv) The applicant is undergoing substance abuse treatment or is~~
35 ~~participating in meetings of a twelve-step group such as alcoholics~~
36 ~~anonymous)).~~

37 (b) If the suspension is for failure to respond, pay, or comply
38 with a notice of traffic infraction or conviction, the applicant must
39 enter into a payment plan with the court.

1 (c) An occupational driver's license issued to an applicant
2 described in (a) of this subsection shall be valid for the period of
3 the suspension or revocation (~~((but not more than two years))~~).

4 ~~((d) Upon receipt of evidence that a holder of an occupational
5 driver's license granted under this subsection is no longer enrolled in
6 an apprenticeship or on the job training program, the director shall
7 give written notice by first class mail to the driver that the
8 occupational driver's license shall be canceled. The effective date of
9 cancellation shall be fifteen days from the date of mailing the notice.
10 If at any time before the cancellation goes into effect the driver
11 submits evidence of continued enrollment in the program, the
12 cancellation shall be stayed. If the cancellation becomes effective,
13 the driver may obtain, at no additional charge, a new occupational
14 driver's license upon submittal of evidence of enrollment in another
15 program that meets the criteria set forth in this subsection.~~

16 ~~(e) The department shall not issue an occupational driver's license
17 under (a)(iv) of this subsection if the applicant is able to receive
18 transit services sufficient to allow for the applicant's participation
19 in the programs referenced under (a)(iv) of this subsection.)~~

20 (3) An applicant for an occupational or temporary restricted
21 driver's license who qualifies under subsection (1) or (2) of this
22 section is eligible to receive such license only if:

23 ~~(a) ((Within one year immediately preceding the date of the offense
24 that gave rise to the present conviction, the applicant has not
25 committed any offense relating to motor vehicles for which suspension
26 or revocation of a driver's license is mandatory; and~~

27 ~~(b)) Within seven years immediately preceding the date of the
28 offense that gave rise to the present conviction or incident, the
29 applicant has not committed ((any of the following offenses: (i)
30 Driving or being in actual physical control of a motor vehicle while
31 under the influence of intoxicating liquor; (ii)) vehicular homicide
32 under RCW 46.61.520(+) or ((+iii)) vehicular assault under RCW
33 46.61.522; and~~

34 ~~((e)) (b) The applicant demonstrates that it is necessary for him
35 or her to operate a motor vehicle because he or she:~~

36 ~~(i) Is engaged in an occupation or trade that makes it essential
37 that he or she operate a motor vehicle(, except as allowed under
38 subsection (2)(a) of this section));~~

1 (ii) Is undergoing continuing health care or providing continuing
2 care to another who is dependent upon the applicant;

3 (iii) Is enrolled in an educational institution and pursuing a
4 course of study leading to a diploma, degree, or other certification of
5 successful educational completion;

6 (iv) Is undergoing substance abuse treatment or is participating in
7 meetings of a twelve-step group such as Alcoholics Anonymous that
8 requires the petitioner to drive to or from the treatment or meetings;

9 (v) Is fulfilling court-ordered community service responsibilities;

10 (vi) Is in a program that assists persons who are enrolled in a
11 WorkFirst program pursuant to chapter 74.08A RCW to become gainfully
12 employed and the program requires a driver's license;

13 (vii) Is in an apprenticeship, on-the-job training, or welfare-to-
14 work program; or

15 (viii) Presents evidence that he or she has applied for a position
16 in an apprenticeship or on-the-job training program for which a
17 driver's license is required to begin the program, provided that a
18 license granted under this provision shall be in effect for no longer
19 than fourteen days; and

20 ~~((d))~~ (c) The applicant files satisfactory proof of financial
21 responsibility under chapter 46.29 RCW; and

22 (d) Upon receipt of evidence that a holder of an occupational
23 driver's license granted under this subsection is no longer enrolled in
24 an apprenticeship or on-the-job training program, the director shall
25 give written notice by first class mail to the driver that the
26 occupational driver's license shall be canceled. The effective date of
27 cancellation shall be fifteen days from the date of mailing the notice.
28 If at any time before the cancellation goes into effect the driver
29 submits evidence of continued enrollment in the program, the
30 cancellation shall be stayed. If the cancellation becomes effective,
31 the driver may obtain, at no additional charge, a new occupational
32 driver's license upon submittal of evidence of enrollment in another
33 program that meets the criteria set forth in this subsection; and

34 (e) The department shall not issue an occupational driver's license
35 under (b)(iv) of this subsection if the applicant is able to receive
36 transit services sufficient to allow for the applicant's participation
37 in the programs referenced under (b)(iv) of this subsection.

38 (4) A person aggrieved by the decision of the department on the

1 application for an occupational or temporary restricted driver's
2 license may request a hearing as provided by rule of the department.

3 (5) The director shall cancel an occupational or temporary
4 restricted driver's license upon receipt of notice that the holder
5 thereof has been convicted of operating a motor vehicle in violation of
6 its restrictions, or of a separate offense that under chapter 46.20 RCW
7 would warrant suspension or revocation of a regular driver's license.
8 The cancellation is effective as of the date of the conviction, and
9 continues with the same force and effect as any suspension or
10 revocation under this title.

11 **Sec. 8.** RCW 46.20.394 and 1999 c 272 s 2 are each amended to read
12 as follows:

13 In issuing an occupational or a temporary restricted driver's
14 license under RCW 46.20.391, the department shall describe the type of
15 (~~occupation permitted~~) qualifying circumstances for the license and
16 shall set forth in detail the specific hours of the day during which
17 the person may drive to and from his (~~place of work~~) or her
18 residence, which may not exceed twelve hours in any one day; the days
19 of the week during which the license may be used; and the general
20 routes over which the person may travel. In issuing an occupational or
21 temporary restricted driver's license that meets the qualifying
22 circumstance under RCW 46.20.391 (~~((2)(a)(iv))~~) (3)(b)(iv), the
23 department shall set forth in detail the specific hours during which
24 the person may drive to and from substance abuse treatment or meetings
25 of a twelve-step group such as alcoholics anonymous, the days of the
26 week during which the license may be used, and the general routes over
27 which the person may travel. These restrictions shall be prepared in
28 written form by the department, which document shall be carried in the
29 vehicle at all times and presented to a law enforcement officer under
30 the same terms as the occupational or temporary restricted driver's
31 license. Any violation of the restrictions constitutes a violation of
32 RCW 46.20.342 and subjects the person to all procedures and penalties
33 therefor.

34 **Sec. 9.** RCW 46.20.400 and 1967 c 32 s 33 are each amended to read
35 as follows:

36 If an occupational or a temporary restricted driver's license is
37 issued and is not revoked during the period for which issued the

1 licensee may obtain a new driver's license at the end of such period,
2 but no new driver's (~~permit shall~~) license may be issued to such
3 person until he or she surrenders his or her occupational or temporary
4 restricted driver's license and his or her copy of the order, and the
5 director is satisfied that (~~he~~) the person complies with all other
6 provisions of law relative to the issuance of a driver's license.

7 **Sec. 10.** RCW 46.20.410 and 1967 c 32 s 34 are each amended to read
8 as follows:

9 Any person convicted for violation of any restriction of an
10 occupational or a temporary restricted driver's license shall in
11 addition to the immediate revocation of such license and any other
12 penalties provided by law be fined not less than fifty nor more than
13 two hundred dollars or imprisoned for not more than six months or both
14 such fine and imprisonment.

15 **Sec. 11.** RCW 46.20.720 and 2003 c 366 s 1 are each amended to read
16 as follows:

17 (1) The court may order that after a period of suspension,
18 revocation, or denial of driving privileges, and for up to as long as
19 the court has jurisdiction, any person convicted of any offense
20 involving the use, consumption, or possession of alcohol while
21 operating a motor vehicle may drive only a motor vehicle equipped with
22 a functioning ignition interlock (~~or other biological or technical~~
23 ~~device~~). The court shall establish a specific calibration setting at
24 which the interlock will prevent the vehicle from being started. The
25 court shall also establish the period of time for which interlock use
26 will be required.

27 (2)(~~(a)~~) The department shall require that, after any applicable
28 period of suspension, revocation, or denial of driving privileges, a
29 person may drive only a motor vehicle equipped with a functioning
30 ignition interlock (~~or other biological or technical~~) device if the
31 person is convicted of (~~(a)~~) an alcohol-related violation of RCW
32 46.61.502 or 46.61.504 or an equivalent local ordinance (~~and it is:~~

33 ~~(i) The person's first conviction or a deferred prosecution under~~
34 ~~chapter 10.05 RCW and his or her alcohol concentration was at least~~
35 ~~0.15, or by reason of the person's refusal to take a test offered~~
36 ~~pursuant to RCW 46.20.308 there is no test result indicating the~~
37 ~~person's alcohol concentration;~~

1 ~~(ii) The person's second or subsequent conviction; or~~
2 ~~(iii) The person's first conviction and the person has a previous~~
3 ~~deferred prosecution under chapter 10.05 RCW or it is a deferred~~
4 ~~prosecution under chapter 10.05 RCW and the person has a previous~~
5 ~~conviction)).~~

6 ~~((b))~~ The department may waive the requirement for the use of
7 such a device if it concludes that such devices are not reasonably
8 available in the local area. ~~((Nothing in this section may be~~
9 ~~interpreted as entitling a person to more than one deferred~~
10 ~~prosecution.~~

11 ~~(3) In the case of a person under subsection (1) of this section,~~
12 ~~the court shall establish a specific calibration setting at which the~~
13 ~~ignition interlock or other biological or technical device will prevent~~
14 ~~the motor vehicle from being started and the period of time that the~~
15 ~~person shall be subject to the restriction. In the case of a person~~
16 ~~under subsection (2) of this section,)~~ The device is not necessary on
17 vehicles owned by a person's employer and driven as a requirement of
18 employment during working hours.

19 The ignition interlock ((or other biological or technical)) device
20 shall be calibrated to prevent the motor vehicle from being started
21 when the breath sample provided has an alcohol concentration of 0.025
22 or more(~~, and~~). The period of time of the restriction will be as
23 follows:

24 (a) For a person ~~((i) who is subject to RCW 46.61.5055 (1)(b),~~
25 ~~(2), or (3), or who is subject to a deferred prosecution program under~~
26 ~~chapter 10.05 RCW; and (ii))~~ who has not previously been restricted
27 under this section, a period of one year;

28 (b) For a person who has previously been restricted under (a) of
29 this subsection, a period of five years;

30 (c) For a person who has previously been restricted under (b) of
31 this subsection, a period of ten years.

32 ~~((For purposes of this section, "convicted" means being found~~
33 ~~guilty of an offense or being placed on a deferred prosecution program~~
34 ~~under chapter 10.05 RCW.))~~

35 **Sec. 12.** RCW 46.20.740 and 2001 c 55 s 1 are each amended to read
36 as follows:

37 (1) The department shall attach or imprint a notation on the
38 driving record of any person restricted under RCW 46.20.720 stating

1 that the person may operate only a motor vehicle equipped with ((an))
2 a functioning ignition interlock ((or other biological or technical))
3 device. The department shall determine the person's eligibility for
4 licensing based upon written verification by a company doing business
5 in the state that it has installed the required device on a vehicle
6 owned or operated by the person seeking reinstatement. If, based upon
7 notification from the interlock provider or otherwise, the department
8 determines that an ignition interlock required under this section is no
9 longer installed or functioning as required, the department shall
10 suspend the person's license or privilege to drive. Whenever the
11 license or driving privilege of any person is suspended or revoked as
12 a result of noncompliance with an ignition interlock requirement, the
13 suspension shall remain in effect until the person provides notice
14 issued by a company doing business in the state that a vehicle owned or
15 operated by the person is equipped with a functioning ignition
16 interlock device.

17 (2) It is a misdemeanor for a person with such a notation on his or
18 her driving record to operate a motor vehicle that is not so equipped.

19 **Sec. 13.** RCW 46.61.5055 and 2003 c 103 s 1 are each amended to
20 read as follows:

21 (1) A person who is convicted of a violation of RCW 46.61.502 or
22 46.61.504 and who has no prior offense within seven years shall be
23 punished as follows:

24 (a) In the case of a person whose alcohol concentration was less
25 than 0.15, or for whom for reasons other than the person's refusal to
26 take a test offered pursuant to RCW 46.20.308 there is no test result
27 indicating the person's alcohol concentration:

28 (i) By imprisonment for not less than one day nor more than one
29 year. Twenty-four consecutive hours of the imprisonment may not be
30 suspended or deferred unless the court finds that the imposition of
31 this mandatory minimum sentence would impose a substantial risk to the
32 offender's physical or mental well-being. Whenever the mandatory
33 minimum sentence is suspended or deferred, the court shall state in
34 writing the reason for granting the suspension or deferral and the
35 facts upon which the suspension or deferral is based. In lieu of the
36 mandatory minimum term of imprisonment required under this subsection
37 (1)(a)(i), the court may order not less than fifteen days of electronic
38 home monitoring. The offender shall pay the cost of electronic home

1 monitoring. The county or municipality in which the penalty is being
2 imposed shall determine the cost. The court may also require the
3 offender's electronic home monitoring device to include an alcohol
4 detection breathalyzer, and the court may restrict the amount of
5 alcohol the offender may consume during the time the offender is on
6 electronic home monitoring; and

7 (ii) By a fine of not less than three hundred fifty dollars nor
8 more than five thousand dollars. Three hundred fifty dollars of the
9 fine may not be suspended or deferred unless the court finds the
10 offender to be indigent; or

11 (b) In the case of a person whose alcohol concentration was at
12 least 0.15, or for whom by reason of the person's refusal to take a
13 test offered pursuant to RCW 46.20.308 there is no test result
14 indicating the person's alcohol concentration:

15 (i) By imprisonment for not less than two days nor more than one
16 year. Two consecutive days of the imprisonment may not be suspended or
17 deferred unless the court finds that the imposition of this mandatory
18 minimum sentence would impose a substantial risk to the offender's
19 physical or mental well-being. Whenever the mandatory minimum sentence
20 is suspended or deferred, the court shall state in writing the reason
21 for granting the suspension or deferral and the facts upon which the
22 suspension or deferral is based. In lieu of the mandatory minimum term
23 of imprisonment required under this subsection (1)(b)(i), the court may
24 order not less than thirty days of electronic home monitoring. The
25 offender shall pay the cost of electronic home monitoring. The county
26 or municipality in which the penalty is being imposed shall determine
27 the cost. The court may also require the offender's electronic home
28 monitoring device to include an alcohol detection breathalyzer, and the
29 court may restrict the amount of alcohol the offender may consume
30 during the time the offender is on electronic home monitoring; and

31 (ii) By a fine of not less than five hundred dollars nor more than
32 five thousand dollars. Five hundred dollars of the fine may not be
33 suspended or deferred unless the court finds the offender to be
34 indigent(~~(; and~~

35 ~~(iii) By a court ordered restriction under RCW 46.20.720)).~~

36 (2) A person who is convicted of a violation of RCW 46.61.502 or
37 46.61.504 and who has one prior offense within seven years shall be
38 punished as follows:

1 (a) In the case of a person whose alcohol concentration was less
2 than 0.15, or for whom for reasons other than the person's refusal to
3 take a test offered pursuant to RCW 46.20.308 there is no test result
4 indicating the person's alcohol concentration:

5 (i) By imprisonment for not less than thirty days nor more than one
6 year and sixty days of electronic home monitoring. The offender shall
7 pay for the cost of the electronic monitoring. The county or
8 municipality where the penalty is being imposed shall determine the
9 cost. The court may also require the offender's electronic home
10 monitoring device include an alcohol detection breathalyzer, and may
11 restrict the amount of alcohol the offender may consume during the time
12 the offender is on electronic home monitoring. Thirty days of
13 imprisonment and sixty days of electronic home monitoring may not be
14 suspended or deferred unless the court finds that the imposition of
15 this mandatory minimum sentence would impose a substantial risk to the
16 offender's physical or mental well-being. Whenever the mandatory
17 minimum sentence is suspended or deferred, the court shall state in
18 writing the reason for granting the suspension or deferral and the
19 facts upon which the suspension or deferral is based; and

20 (ii) By a fine of not less than five hundred dollars nor more than
21 five thousand dollars. Five hundred dollars of the fine may not be
22 suspended or deferred unless the court finds the offender to be
23 indigent; (~~and~~

24 ~~(iii) By a court ordered restriction under RCW 46.20.720;)) or~~

25 (b) In the case of a person whose alcohol concentration was at
26 least 0.15, or for whom by reason of the person's refusal to take a
27 test offered pursuant to RCW 46.20.308 there is no test result
28 indicating the person's alcohol concentration:

29 (i) By imprisonment for not less than forty-five days nor more than
30 one year and ninety days of electronic home monitoring. The offender
31 shall pay for the cost of the electronic monitoring. The county or
32 municipality where the penalty is being imposed shall determine the
33 cost. The court may also require the offender's electronic home
34 monitoring device include an alcohol detection breathalyzer, and may
35 restrict the amount of alcohol the offender may consume during the time
36 the offender is on electronic home monitoring. Forty-five days of
37 imprisonment and ninety days of electronic home monitoring may not be
38 suspended or deferred unless the court finds that the imposition of
39 this mandatory minimum sentence would impose a substantial risk to the

1 offender's physical or mental well-being. Whenever the mandatory
2 minimum sentence is suspended or deferred, the court shall state in
3 writing the reason for granting the suspension or deferral and the
4 facts upon which the suspension or deferral is based; and

5 (ii) By a fine of not less than seven hundred fifty dollars nor
6 more than five thousand dollars. Seven hundred fifty dollars of the
7 fine may not be suspended or deferred unless the court finds the
8 offender to be indigent(~~(; and~~

9 ~~(iii) By a court ordered restriction under RCW 46.20.720)).~~

10 (3) A person who is convicted of a violation of RCW 46.61.502 or
11 46.61.504 and who has two or more prior offenses within seven years
12 shall be punished as follows:

13 (a) In the case of a person whose alcohol concentration was less
14 than 0.15, or for whom for reasons other than the person's refusal to
15 take a test offered pursuant to RCW 46.20.308 there is no test result
16 indicating the person's alcohol concentration:

17 (i) By imprisonment for not less than ninety days nor more than one
18 year and one hundred twenty days of electronic home monitoring. The
19 offender shall pay for the cost of the electronic monitoring. The
20 county or municipality where the penalty is being imposed shall
21 determine the cost. The court may also require the offender's
22 electronic home monitoring device include an alcohol detection
23 breathalyzer, and may restrict the amount of alcohol the offender may
24 consume during the time the offender is on electronic home monitoring.
25 Ninety days of imprisonment and one hundred twenty days of electronic
26 home monitoring may not be suspended or deferred unless the court finds
27 that the imposition of this mandatory minimum sentence would impose a
28 substantial risk to the offender's physical or mental well-being.
29 Whenever the mandatory minimum sentence is suspended or deferred, the
30 court shall state in writing the reason for granting the suspension or
31 deferral and the facts upon which the suspension or deferral is based;
32 and

33 (ii) By a fine of not less than one thousand dollars nor more than
34 five thousand dollars. One thousand dollars of the fine may not be
35 suspended or deferred unless the court finds the offender to be
36 indigent(~~(; and~~

37 ~~(iii) By a court ordered restriction under RCW 46.20.720)); or~~

38 (b) In the case of a person whose alcohol concentration was at

1 least 0.15, or for whom by reason of the person's refusal to take a
2 test offered pursuant to RCW 46.20.308 there is no test result
3 indicating the person's alcohol concentration:

4 (i) By imprisonment for not less than one hundred twenty days nor
5 more than one year and one hundred fifty days of electronic home
6 monitoring. The offender shall pay for the cost of the electronic
7 monitoring. The county or municipality where the penalty is being
8 imposed shall determine the cost. The court may also require the
9 offender's electronic home monitoring device include an alcohol
10 detection breathalyzer, and may restrict the amount of alcohol the
11 offender may consume during the time the offender is on electronic home
12 monitoring. One hundred twenty days of imprisonment and one hundred
13 fifty days of electronic home monitoring may not be suspended or
14 deferred unless the court finds that the imposition of this mandatory
15 minimum sentence would impose a substantial risk to the offender's
16 physical or mental well-being. Whenever the mandatory minimum sentence
17 is suspended or deferred, the court shall state in writing the reason
18 for granting the suspension or deferral and the facts upon which the
19 suspension or deferral is based; and

20 (ii) By a fine of not less than one thousand five hundred dollars
21 nor more than five thousand dollars. One thousand five hundred dollars
22 of the fine may not be suspended or deferred unless the court finds the
23 offender to be indigent(~~(; and~~

24 ~~(iii) By a court ordered restriction under RCW 46.20.720)).~~

25 (4) If a person who is convicted of a violation of RCW 46.61.502 or
26 46.61.504 committed the offense while a passenger under the age of
27 sixteen was in the vehicle, the court shall:

28 (a) In any case in which the installation and use of an interlock
29 or other device is not mandatory under RCW 46.20.720 or other law,
30 order the use of such a device for not less than sixty days following
31 the restoration of the person's license, permit, or nonresident driving
32 privileges; and

33 (b) In any case in which the installation and use of such a device
34 is otherwise mandatory, order the use of such a device for an
35 additional sixty days.

36 (5) In exercising its discretion in setting penalties within the
37 limits allowed by this section, the court shall particularly consider
38 the following:

1 (a) Whether the person's driving at the time of the offense was
2 responsible for injury or damage to another or another's property; and

3 (b) Whether at the time of the offense the person was driving or in
4 physical control of a vehicle with one or more passengers.

5 (6) An offender punishable under this section is subject to the
6 alcohol assessment and treatment provisions of RCW 46.61.5056.

7 (7) The license, permit, or nonresident privilege of a person
8 convicted of driving or being in physical control of a motor vehicle
9 while under the influence of intoxicating liquor or drugs must:

10 (a) If the person's alcohol concentration was less than 0.15, or if
11 for reasons other than the person's refusal to take a test offered
12 under RCW 46.20.308 there is no test result indicating the person's
13 alcohol concentration:

14 (i) Where there has been no prior offense within seven years, be
15 suspended or denied by the department for ninety days;

16 (ii) Where there has been one prior offense within seven years, be
17 revoked or denied by the department for two years; or

18 (iii) Where there have been two or more prior offenses within seven
19 years, be revoked or denied by the department for three years;

20 (b) If the person's alcohol concentration was at least 0.15(~~(, or~~
21 ~~if by reason of the person's refusal to take a test offered under RCW~~
22 ~~46.20.308 there is no test result indicating the person's alcohol~~
23 ~~concentration))):~~

24 (i) Where there has been no prior offense within seven years, be
25 revoked or denied by the department for one year;

26 (ii) Where there has been one prior offense within seven years, be
27 revoked or denied by the department for nine hundred days; or

28 (iii) Where there have been two or more prior offenses within seven
29 years, be revoked or denied by the department for four years; or

30 (c) If by reason of the person's refusal to take a test offered
31 under RCW 46.20.308, there is no test result indicating the person's
32 alcohol concentration:

33 (i) Where there have been no prior offenses within seven years, be
34 revoked or denied by the department for two years;

35 (ii) Where there has been one prior offense within seven years, be
36 revoked or denied by the department for three years; or

37 (iii) Where there have been two or more previous offenses within
38 seven years, be revoked or denied by the department for four years.

1 The department shall grant credit on a day-for-day basis for any
2 portion of a suspension, revocation, or denial already served under
3 this subsection for a suspension, revocation, or denial imposed under
4 RCW 46.20.3101 arising out of the same incident.

5 For purposes of this subsection (7), the department shall refer to
6 the driver's record maintained under RCW 46.52.120 when determining the
7 existence of prior offenses.

8 (8) After expiration of any period of suspension, revocation, or
9 denial of the offender's license, permit, or privilege to drive
10 required by this section, the department shall place the offender's
11 driving privilege in probationary status pursuant to RCW 46.20.355.

12 (9)(a) In addition to any nonsuspendable and nondeferrable jail
13 sentence required by this section, whenever the court imposes less than
14 one year in jail, the court shall also suspend but shall not defer a
15 period of confinement for a period not exceeding five years. The court
16 shall impose conditions of probation that include: (i) Not driving a
17 motor vehicle within this state without a valid license to drive and
18 proof of financial responsibility for the future; (ii) not driving a
19 motor vehicle within this state while having an alcohol concentration
20 of 0.08 or more within two hours after driving; and (iii) not refusing
21 to submit to a test of his or her breath or blood to determine alcohol
22 concentration upon request of a law enforcement officer who has
23 reasonable grounds to believe the person was driving or was in actual
24 physical control of a motor vehicle within this state while under the
25 influence of intoxicating liquor. The court may impose conditions of
26 probation that include nonrepetition, installation of an ignition
27 interlock (~~((or other biological or technical))~~) device on the
28 probationer's motor vehicle, alcohol or drug treatment, supervised
29 probation, or other conditions that may be appropriate. The sentence
30 may be imposed in whole or in part upon violation of a condition of
31 probation during the suspension period.

32 (b) For each violation of mandatory conditions of probation under
33 (a)(i) (~~and~~), (ii), or (~~(a)(i) and~~) (iii) of this subsection, the
34 court shall order the convicted person to be confined for thirty days,
35 which shall not be suspended or deferred.

36 (c) For each incident involving a violation of a mandatory
37 condition of probation imposed under this subsection, the license,
38 permit, or privilege to drive of the person shall be suspended by the
39 court for thirty days or, if such license, permit, or privilege to

1 drive already is suspended, revoked, or denied at the time the finding
2 of probation violation is made, the suspension, revocation, or denial
3 then in effect shall be extended by thirty days. The court shall
4 notify the department of any suspension, revocation, or denial or any
5 extension of a suspension, revocation, or denial imposed under this
6 subsection.

7 (10) A court may waive the electronic home monitoring requirements
8 of this chapter when:

9 (a) The offender does not have a dwelling, telephone service, or
10 any other necessity to operate an electronic home monitoring system;

11 (b) The offender does not reside in the state of Washington; or

12 (c) The court determines that there is reason to believe that the
13 offender would violate the conditions of the electronic home monitoring
14 penalty.

15 Whenever the mandatory minimum term of electronic home monitoring
16 is waived, the court shall state in writing the reason for granting the
17 waiver and the facts upon which the waiver is based, and shall impose
18 an alternative sentence with similar punitive consequences. The
19 alternative sentence may include, but is not limited to, additional
20 jail time, work crew, or work camp.

21 Whenever the combination of jail time and electronic home
22 monitoring or alternative sentence would exceed three hundred sixty-
23 five days, the offender shall serve the jail portion of the sentence
24 first, and the electronic home monitoring or alternative portion of the
25 sentence shall be reduced so that the combination does not exceed three
26 hundred sixty-five days.

27 (11) An offender serving a sentence under this section, whether or
28 not a mandatory minimum term has expired, may be granted an
29 extraordinary medical placement by the jail administrator subject to
30 the standards and limitations set forth in RCW 9.94A.728(4).

31 (12) For purposes of this section:

32 (a) A "prior offense" means any of the following:

33 (i) A conviction for a violation of RCW 46.61.502 or an equivalent
34 local ordinance;

35 (ii) A conviction for a violation of RCW 46.61.504 or an equivalent
36 local ordinance;

37 (iii) A conviction for a violation of RCW 46.61.520 committed while
38 under the influence of intoxicating liquor or any drug;

1 (iv) A conviction for a violation of RCW 46.61.522 committed while
2 under the influence of intoxicating liquor or any drug;

3 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
4 9A.36.050 or an equivalent local ordinance, if the conviction is the
5 result of a charge that was originally filed as a violation of RCW
6 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
7 46.61.520 or 46.61.522;

8 (vi) An out-of-state conviction for a violation that would have
9 been a violation of (a)(i), (ii), (iii), (iv), or (v) of this
10 subsection if committed in this state;

11 (vii) A deferred prosecution under chapter 10.05 RCW granted in a
12 prosecution for a violation of RCW 46.61.502, 46.61.504, or an
13 equivalent local ordinance; or

14 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
15 prosecution for a violation of RCW 46.61.5249, or an equivalent local
16 ordinance, if the charge under which the deferred prosecution was
17 granted was originally filed as a violation of RCW 46.61.502 or
18 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
19 46.61.522; and

20 (b) "Within seven years" means that the arrest for a prior offense
21 occurred within seven years of the arrest for the current offense.

22 **Sec. 14.** RCW 46.63.020 and 2003 c 33 s 4 are each amended to read
23 as follows:

24 Failure to perform any act required or the performance of any act
25 prohibited by this title or an equivalent administrative regulation or
26 local law, ordinance, regulation, or resolution relating to traffic
27 including parking, standing, stopping, and pedestrian offenses, is
28 designated as a traffic infraction and may not be classified as a
29 criminal offense, except for an offense contained in the following
30 provisions of this title or a violation of an equivalent administrative
31 regulation or local law, ordinance, regulation, or resolution:

32 (1) RCW 46.09.120(2) relating to the operation of a nonhighway
33 vehicle while under the influence of intoxicating liquor or a
34 controlled substance;

35 (2) RCW 46.09.130 relating to operation of nonhighway vehicles;

36 (3) RCW 46.10.090(2) relating to the operation of a snowmobile
37 while under the influence of intoxicating liquor or narcotics or habit-
38 forming drugs or in a manner endangering the person of another;

- 1 (4) RCW 46.10.130 relating to the operation of snowmobiles;
- 2 (5) Chapter 46.12 RCW relating to certificates of ownership and
3 registration and markings indicating that a vehicle has been destroyed
4 or declared a total loss;
- 5 (6) RCW 46.16.010 relating to initial registration of motor
6 vehicles;
- 7 (7) RCW 46.16.011 relating to permitting unauthorized persons to
8 drive;
- 9 (8) RCW 46.16.160 relating to vehicle trip permits;
- 10 (9) RCW 46.16.381(2) relating to knowingly providing false
11 information in conjunction with an application for a special placard or
12 license plate for disabled persons' parking;
- 13 (10) RCW 46.20.005 relating to driving without a valid driver's
14 license;
- 15 (11) RCW 46.20.091 relating to false statements regarding a
16 driver's license or instruction permit;
- 17 (12) RCW 46.20.0921 relating to the unlawful possession and use of
18 a driver's license;
- 19 (13) RCW 46.20.342 relating to driving with a suspended or revoked
20 license or status;
- 21 (14) RCW 46.20.345 relating to the operation of a motor vehicle
22 with a suspended or revoked license;
- 23 (15) RCW 46.20.410 relating to the violation of restrictions of an
24 occupational or temporary restricted driver's license;
- 25 (16) RCW 46.20.740 relating to operation of a motor vehicle without
26 an ignition interlock device in violation of a license notation that
27 the device is required;
- 28 (17) RCW 46.20.750 relating to assisting another person to start a
29 vehicle equipped with an ignition interlock device;
- 30 (18) RCW 46.25.170 relating to commercial driver's licenses;
- 31 (19) Chapter 46.29 RCW relating to financial responsibility;
- 32 (20) RCW 46.30.040 relating to providing false evidence of
33 financial responsibility;
- 34 (21) RCW 46.37.435 relating to wrongful installation of
35 sunscreening material;
- 36 (22) RCW 46.37.650 relating to the sale, resale, distribution, or
37 installation of a previously deployed air bag;
- 38 (23) RCW 46.44.180 relating to operation of mobile home pilot
39 vehicles;

1 (24) RCW 46.48.175 relating to the transportation of dangerous
2 articles;

3 (25) RCW 46.52.010 relating to duty on striking an unattended car
4 or other property;

5 (26) RCW 46.52.020 relating to duty in case of injury to or death
6 of a person or damage to an attended vehicle;

7 (27) RCW 46.52.090 relating to reports by repairmen, storagemen,
8 and appraisers;

9 (28) RCW 46.52.130 relating to confidentiality of the driving
10 record to be furnished to an insurance company, an employer, and an
11 alcohol/drug assessment or treatment agency;

12 (29) RCW 46.55.020 relating to engaging in the activities of a
13 registered tow truck operator without a registration certificate;

14 (30) RCW 46.55.035 relating to prohibited practices by tow truck
15 operators;

16 (31) RCW 46.61.015 relating to obedience to police officers,
17 flaggers, or fire fighters;

18 (32) RCW 46.61.020 relating to refusal to give information to or
19 cooperate with an officer;

20 (33) RCW 46.61.022 relating to failure to stop and give
21 identification to an officer;

22 (34) RCW 46.61.024 relating to attempting to elude pursuing police
23 vehicles;

24 (35) RCW 46.61.500 relating to reckless driving;

25 (36) RCW 46.61.502 and 46.61.504 relating to persons under the
26 influence of intoxicating liquor or drugs;

27 (37) RCW 46.61.503 relating to a person under age twenty-one
28 driving a motor vehicle after consuming alcohol;

29 (38) RCW 46.61.520 relating to vehicular homicide by motor vehicle;

30 (39) RCW 46.61.522 relating to vehicular assault;

31 (40) RCW 46.61.5249 relating to first degree negligent driving;

32 (41) RCW 46.61.527(4) relating to reckless endangerment of roadway
33 workers;

34 (42) RCW 46.61.530 relating to racing of vehicles on highways;

35 (43) RCW 46.61.685 relating to leaving children in an unattended
36 vehicle with the motor running;

37 (44) RCW 46.61.740 relating to theft of motor vehicle fuel;

38 (45) RCW 46.64.010 relating to unlawful cancellation of or attempt
39 to cancel a traffic citation;

- 1 (46) RCW 46.64.048 relating to attempting, aiding, abetting,
2 coercing, and committing crimes;
- 3 (47) Chapter 46.65 RCW relating to habitual traffic offenders;
- 4 (48) RCW 46.68.010 relating to false statements made to obtain a
5 refund;
- 6 (49) Chapter 46.70 RCW relating to unfair motor vehicle business
7 practices, except where that chapter provides for the assessment of
8 monetary penalties of a civil nature;
- 9 (50) Chapter 46.72 RCW relating to the transportation of passengers
10 in for hire vehicles;
- 11 (51) RCW 46.72A.060 relating to limousine carrier insurance;
- 12 (52) RCW 46.72A.070 relating to operation of a limousine without a
13 vehicle certificate;
- 14 (53) RCW 46.72A.080 relating to false advertising by a limousine
15 carrier;
- 16 (54) Chapter 46.80 RCW relating to motor vehicle wreckers;
- 17 (55) Chapter 46.82 RCW relating to driver's training schools;
- 18 (56) RCW 46.87.260 relating to alteration or forgery of a cab card,
19 letter of authority, or other temporary authority issued under chapter
20 46.87 RCW;
- 21 (57) RCW 46.87.290 relating to operation of an unregistered or
22 unlicensed vehicle under chapter 46.87 RCW.

23 **Sec. 15.** RCW 46.68.041 and 1998 c 212 s 3 are each amended to read
24 as follows:

25 (1) Except as provided in subsection (2) of this section, the
26 department shall forward all funds accruing under the provisions of
27 chapter 46.20 RCW together with a proper identifying, detailed report
28 to the state treasurer who shall deposit such moneys to the credit of
29 the highway safety fund.

30 (2) Sixty-three percent of each fee collected by the department
31 under RCW 46.20.311 (1)((~~b~~)) (e)(ii), (2)(b)(ii), and (3)(b) shall be
32 deposited in the impaired driving safety account.

33 **Sec. 16.** RCW 46.68.260 and 1998 c 212 s 2 are each amended to read
34 as follows:

35 The impaired driving safety account is created in the custody of
36 the state treasurer. All receipts from fees collected under RCW
37 46.20.311 (1)((~~b~~)) (e)(ii), (2)(b)(ii), and (3)(b) shall be deposited

1 according to RCW 46.68.041. Expenditures from this account may be used
2 only to fund projects to reduce impaired driving and to provide funding
3 to local governments for costs associated with enforcing laws relating
4 to driving and boating while under the influence of intoxicating liquor
5 or any drug. The account is subject to allotment procedures under
6 chapter 43.88 RCW. Moneys in the account may be spent only after
7 appropriation.

8 NEW SECTION. **Sec. 17.** Section 2 of this act takes effect if
9 section 2 of Substitute House Bill No. 3055 is enacted into law."

SHB 2660 - S AMD 824

By Senators Haugen, McCaslin

ADOPTED 03/10/2004

10 On page 1, line 1 of the title, after "offenses;" strike the
11 remainder of the title and insert "amending RCW 10.05.140, 46.20.308,
12 46.20.311, 46.20.342, 46.20.380, 46.20.394, 46.20.400, 46.20.410,
13 46.20.720, 46.20.740, 46.61.5055, 46.63.020, 46.68.041, and 46.68.260;
14 reenacting and amending RCW 46.20.3101 and 46.20.391; and providing a
15 contingent effective date."

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